



0000013540

21c

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

DEC 03 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

KS

IN THE MATTER OF THE APPLICATION OF
METROPOLITAN FIBER SYSTEMS OF
ARIZONA, INC. TO DISCONTINUE PRIVATE
LINE TELECOMMUNICATIONS SERVICES
AND CANCEL ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. T-03006A-04-0388

DECISION NO. 67436ORDER

Open Meeting
November 23 and 24, 2004
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. In Decision No. 59812 (August 22, 1996), the Commission granted to Metropolitan Fiber Systems of Arizona, Inc. ("Applicant") a Certificate of Convenience and Necessity ("CC&N") authorizing it to provide competitive intrastate telecommunications service within the exchange served by U S West Communications, Inc. as a private line telecommunications service provider.

2. Decision No. 66595 (December 9, 2003) approved a reorganization plan that WorldCom Inc. filed on October 3, 2003. Decision No. 66595 ordered WorldCom Inc. to submit an application to cancel the CC&Ns of the Applicant and two other of WorldCom Inc.'s subsidiaries¹ that were to be merged into MCI metro Access Transmission Services, LLC ("MCI metro") under the approved reorganization plan. Decision No. 66595 also required WorldCom Inc. to re-file Applicant's tariff with the revised company name of MCI metro.

3. On May 11, 2004, MCI metro filed with the Commission Advice Letter No. 04-01

¹ Brooks Fiber Communications of Tucson, Inc. and MCI WorldCom, Inc. The CC&N of Brooks Fiber Communications of Tucson, Inc. was cancelled in Decision No. 67179 (August 10, 2004) and the CC&N of MCI WorldCom Communications, Inc. was modified in Decision No. 67278 (October 5, 2004).

1 renaming Applicant's Tariff No. 1 as MCImetro's Arizona Tariff No. 5, and grandfathering all
2 services provided in Applicant's Tariff No. 1.

3 4. On May 24, 2004, Applicant filed the above-captioned application in compliance with
4 Decision No. 66595.

5 5. On September 29, 2004, the Commission's Utilities Division Staff ("Staff") filed a
6 Staff Report in this matter, recommending approval of Applicant's request to cancel its CC&N.

7 6. The application stated that as of May 24, 2004, all of Applicant's customers had
8 migrated to MCImetro.

9 7. A.A.C. R14-2-1107(A) requires any telecommunications company providing
10 competitive local exchange or interexchange service on a resold or facilities-based basis that intends
11 to discontinue service or to abandon all or a portion of its service area to file an application for
12 authorization with the Commission setting forth the following:

13 1) Any reasons for the proposed discontinuance of service or abandonment of service
14 area;

15 2) Verification that all affected customers have been notified of the proposed
16 discontinuance or abandonment, and that all affected customers will have access to an alternative
17 local exchange service provider or interexchange service provider;

18 3) Where applicable, a plan for the refund of deposits collected; and

19 4) A list of all alternative utilities providing the same or similar service within the
20 affected geographic area.

21 8. In accordance with A.A.C. R14-2-1107(A)(1), the application set forth the reason for
22 its proposed discontinuance of services. As approved in Decision No. 66595, Applicant's operations
23 were merged into MCImetro.

24 9. In accordance with A.A.C. R14-2-1107(A)(2), the application verified that all affected
25 customers were notified that they would be migrated to MCImetro effective on or after December 31,
26 2003. The application verified that all affected customers will have access to an alternative service
27 provider.

28 10. In accordance with A.A.C. R14-2-1107(A)(3), the application verified that any

1 deposits held by Applicant will now be held by MCImetro pursuant to the relevant tariff provisions.

2 11. In accordance with A.A.C. R14-2-1107(A)(4), the application stated that Qwest
3 Corporation and other service providers are certificated in the affected geographic area.

4 12. A.A.C. R14-2-1107(B) requires an applicant to publish legal notice of the application
5 in all counties affected by the application. Under A.A.C. R14-2-1107(C), once proper notice is
6 effected and if no objection is filed, the Commission may grant the application without a hearing.

7 13. Applicant has not published legal notice in all counties affected by the application.
8 Instead, Applicant has requested a waiver of the notice provisions contained in A.A.C. R14-2-1107 to
9 the extent necessary, on the basis that notice was already provided to all affected customers prior to
10 the merger of Applicant's service operations into MCImetro.

11 14. The Staff Report stated that Applicant's requested waiver of A.A.C. R14-2-1107
12 should be granted because Applicant currently has no customers. However, as explained in Decision
13 No. 67404 (November 2, 2004), it would render A.A.C. R14-2-1107 meaningless and would run
14 afoul of the rule's intent and plain language to exempt an applicant from the requirements of the rule
15 because it has no customers due to its discontinuance of service.

16 15. The application was filed in fulfillment of a requirement of Decision No. 66595,
17 which determined that the reorganization under which Applicant's service operations were merged
18 into MCImetro was in the public interest. The reorganization approved by Decision No. 66595
19 included the transfer of Applicant's customers to MCImetro, such that Decision No. 66595
20 effectively approved the customer transfer to MCImetro and discontinuance of service by Applicant.
21 The public notice requirements of A.A.C. R14-2-1107(B) should therefore be waived under the
22 unique circumstances of this case. However, this waiver should not be considered precedent for other
23 carriers that wish to discontinue service. Absent the unique facts presented in this case, we will
24 strictly enforce the requirements set forth in A.A.C. R14-2-1107.

25 16. The Staff Report indicated that there are no open complaints, inquiries or opinions
26 concerning Applicant.

27 17. The Staff Report indicated that numerous other carriers offer services similar to those
28 which Applicant is requesting authority to discontinue.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. A.A.C. R14-2-1107 applies to any telecommunications company providing competitive local exchange or interexchange service on a resold or facilities-based basis that intends to discontinue service or to abandon all or a portion of its service area.

3. The Commission has jurisdiction over Applicant and the subject matter of the application.

4. The cancellation of Applicant's CC&N is in the public interest.

5. The notice requirements of A.A.C. R14-2-1107(B) and (C) should be waived, under the unique circumstances of this case.

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

ORDER

IT IS THEREFORE ORDERED that the application of Metropolitan Fiber Systems of Arizona, Inc. for discontinuance of private line telecommunications services and for cancellation of its Certificate of Convenience and Necessity is hereby granted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 3rd day of Dec., 2004.

BRIAN C. McNEIL
Executive Secretary

DISSENT: _____

DISSENT: _____

TW:mlj

1 SERVICE LIST FOR:

METROPOLITAN FIBER SYSTEMS OF ARIZONA,
INC.

2 DOCKET NO.:

T-03006A-04-0388

3
4 Thomas H. Campbell
5 Michael T. Hallam
6 LEWIS AND ROCA, LLP
7 40 North Central Avenue
8 Phoenix, AZ 85004

9 Christopher Kempley, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, AZ 85007

14 Ernest G. Johnson, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, AZ 85007
19
20
21
22
23
24
25
26
27
28